

ESTTA Tracking number: **ESTTA224367**

Filing date: **07/15/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91170135
Party	Defendant R & R Partners Inc.
Correspondence Address	Douglas L. Hendricks Morrison & Foester LLP 425 Market Street San Francisco, CA 94105 UNITED STATES
Submission	Motion to Reopen
Filer's Name	Jennifer Lee Taylor
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Signature	/Jennifer Lee Taylor/
Date	07/15/2008
Attachments	Motion to Reopen.pdf ( 12 pages )(439867 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Dorothy Tovar

Opposer,

v.

R & R Partners Inc.

Applicant.

Opposition No. 91170135

Serial No. 76/582,191

Box TTAB NO FEE  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**MOTION TO REOPEN OPPOSITION PROCEEDING**

This communication relates to the Notice of Suspension mailed December 21, 2007, suspending this proceeding pending final determination of a civil action between the parties.

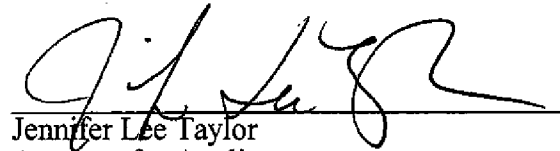
Applicant hereby notifies the TTAB that the civil action at issue has reached a final determination. A copy of the judgment in Applicant's favor from the United States District Court for the District of Nevada (the "District Court") entered on May 17, 2007 is attached hereto as **Exhibit A**. A copy of the order from the Ninth Circuit Court of Appeals filed on April 8, 2008 dismissing Opposer's appeal for failure to file an opening brief is attached hereto as **Exhibit B**. A copy of the District Court's April 10, 2008 Order on Mandate entering the dismissal is attached hereto as **Exhibit C**.

Based on the foregoing, Applicant respectfully asks the TTAB to lift the suspension and allow the opposition proceeding to resume.

Respectfully submitted,

Dated: July 15, 2008

By:



Jennifer Lee Taylor  
Attorney for Applicant  
R&R Partners, Inc.

Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105-2482  
Telephone: (415) 268-6538  
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# **EXHIBIT A**

AO 450 (Rev. 5/85) Judgment in a Civil Case 

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## UNITED STATES DISTRICT COURT

\*\*\*\*\* DISTRICT OF NEVADA

R&R PARTNERS, INC. and  
LAS VEGAS CONVENTION AND  
VISITORS AUTHORITY,

Plaintiffs,

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 3:04-cv-00145-LRH-PAL

V.

DOROTHY TOVAR and  
ADRENALINE SPORTS, INC.,

Defendants.

- \_\_\_ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- \_\_\_ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.
- x**   **Decision by Court.** This action came to be considered before the Court. The issues have been considered and a decision has been rendered.

### IT IS ORDERED AND ADJUDGED

that LVCVA is awarded damages in the amount of \$81,258.90, and costs in the amount of \$33,228.32. Pursuant to 28 U.S.C. § 1961, LVCVA is awarded post-judgment interest at the rate of 4.93% per annum until the judgment is satisfied.

IT IS FURTHER ORDERED that, pursuant to 15 U.S.C. § 1116, Defendants, their successors, officers, parents, subsidiaries, affiliates, agents, assigns and employees, and anyone acting in concert with or at the behest or direction of Defendants, jointly and severally, are hereby PERMANENTLY ENJOINED AND RESTRAINED from the following:

(a) Distributing, displaying, marketing, promoting, offering for sale, and/or selling any goods or services using the What Happens in Vegas Stays in Vegas mark, including any similar phrase linking Defendants to any gaming and tourism location or activity;

- (b) Affixing the WHIVSIV mark on any products, promotional materials, advertisements, point of sale materials, signage or other materials containing or incorporating the WHIVSIV mark, or any other similar name, mark, or designation linking Defendants to any gaming and tourism location or activity;
- (c) Disseminating any products, promotional materials, advertisements, point of sale materials, signage or other materials containing or incorporating the WHIVSIV mark, or any other similar name, mark, or designation linking Defendants to any gaming and tourism location or activity;
- (d) Representing directly or indirectly in any form or manner whatsoever, that Defendants' products or services are in fact the same as or related to any services or products of LVCVA, or are in any manner associated with, sponsored, or approved by LVCVA, or taking any action likely to cause confusion, mistake or deception on the part of purchasers as to the source, origin, sponsorship, approval or affiliation of Defendants' products or service or LVCVA's services and products;
- (e) Registering domain names which include the WHIVSIV mark, or any variation linking Defendants to any gaming and tourism location or activity; and
- (f) Registering and/or applying for any trademark registration for the WHIVSIV mark, or any similar variation linking Defendants to any gaming and tourism location or activity.

IT IS FURTHER ORDERED that, within thirty (30) days of the date this Order becomes effective, Defendants their successors, officers, parents, subsidiaries, affiliates, agents, assigns and employees, and anyone acting in concert with or at the behest or direction of Defendants, shall recall and/or remove from all retailers, including online retailers, all products, promotional materials, advertisements, point of sale materials, signage or other materials containing or incorporating any WHIVSIV mark, or any other similar designation linking Defendants to any gaming and tourism location or activity.

IT IS FURTHER ORDERED that, within thirty (30) days of the date this Order becomes effective, Defendants shall provide written confirmation to counsel for LVCVA that neither they nor their successors, officers, parents, subsidiaries, affiliates, agents assigns and employees, and anyone acting in concert with or at the behest or direction of Defendants, are displaying the WHIVSIV mark. This includes displays of the WHIVSIV mark on any medium, including automobiles.

IT IS FURTHER ORDERED that, within thirty (30) days of the date this Order becomes effective, Defendants submit all necessary papers to complete a transfer of all domain names which include the WHIVSIV mark, or any variation thereof, to LVCVA.

IT IS FURTHER ORDERED that, within thirty (30) days of the date this Order becomes effective, Defendant Dorothy Tovar ("Tovar") shall expressly abandon applications to register the WHIVSIV mark filed after the instant action as follows: Application Serial Nos. 78/869,270, 78/869,267, 78/869,265, 78/869,261, 78/869,257, and 78/869,232.

IT IS FURTHER ORDERED that, within thirty (30) days of the date this Order becomes effective, Defendants, their successors, officers, parents, subsidiaries, affiliates, agents, assigns and employees, and anyone acting in concert with or at the behest or direction of Defendants, shall expressly abandon all other federal or state applications to register the WHIVSIV mark, if any.

IT IS FURTHER ORDERED that Defendants' Counterclaims, dated August 17, 2005, are hereby DISMISSED.

IT IS FURTHER ORDERED that, pursuant to 15 U.S.C. §§ 1119 add 1052(d), Federal Registration Nos. 2,930,998 and 2,986,162 are hereby CANCELLED, and Application Serial Nos. 78/453,025, 78/231,585, 78/398,294, 78/398,277, and 78/311,277 are hereby deemed ABANDONED based on the finding that Tovar does not have the right to register the WHIVSIV mark. In addition, Tovar's state trademark registrations for the WHIVSIV mark in Nevada, California, and any other state in which Tovar may have such registration, are hereby CANCELLED. The court is currently aware of at least one Nevada state registration, issued April 22, 2003, and one California state registration, No. 110197.

May 17, 2007

LANCE S. WILSON

Clerk

/s/ Jennifer Womack

Deputy Clerk

## **EXHIBIT B**



**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

APR 08 2008

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

R&R PARTNERS INC., a Nevada  
Corporation; et al.,

Plaintiffs - Appellees,

v.

DOROTHY TOVAR, an individual; et al.,

Defendants - Appellants.

No. 07-15928

D.C. No. CV-04-00145-LRH  
District of Nevada,  
Reno

ORDER

The court's order dated October 3, 2007 granted appellants an extension of time to file the opening brief until October 9, 2007. Court records do not indicate appellants have filed the opening brief or communicated with the court. Therefore, this case is dismissed pursuant to Ninth Circuit Rule 42-1.

A copy of this order sent to the district court shall act as and for the mandate of this court. Appellees' motion to dismiss is denied as moot.

For the Court:

MOLLY C. DWYER  
Clerk of the Court

Linda K. King  
Deputy Clerk  
Ninth Cir. R. 27-7/Advisory Note to Rule 27  
and Ninth Circuit Rule 27-10

FILED ENTERED	RECEIVED SERVED ON COUNSEL/PARTIES OF RECORD
APR 10 2008	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY

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**United States Court of Appeals for the Ninth Circuit**

**Notice of Docket Activity**

The following transaction was entered on 04/08/2008 at 2:25:29 PM PDT and filed on 04/08/2008

**Case Name:** R&R Partners Inc., et al v. Tovar, et al

**Case Number:** 07-15928

**Document(s):** Document(s)

**Docket Text:**

Order filed (Deputy Clerk: LKK):The court's order dated October 3, 2007 granted appellants an extension of time to file the opening brief until October 9, 2007. Court records do not indicate appellants have filed the opening brief or communicated with the court. Therefore, this case is dismissed pursuant to Ninth Circuit Rule 42-1. A copy of this order sent to the district court shall act as and for the mandate of this court. Appellees' motion to dismiss is denied as moot. [Default;Procedural termination without judicial action;].

The following document(s) are associated with this transaction:

**Document Description:**Dispositive Clerk Order Filed

**Original Filename:**07-15928.pdf

**Electronic Document Stamp:**

[STAMP acecfStamp\_ID=1106763461 [Date=04/08/2008] [FileNumber=6496181-0]

[81584b078cd2c8c5f101e826d492912a31cb7444f51935138fb009f836a46b3d4c765ab7cbba636695f9ect

**Notice will be mailed to:**

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USDC, Reno  
District of Nevada (Reno)  
400 South Virginia Street  
Reno, NV 89501-0000

The following information is for the use of court personnel:

**DOCKET ENTRY ID:** 6496181

**RELIEF(S) DOCKETED:**

to dismiss case for failure to prosecute under Circuit Rule 42-1  
to dismiss the case

**DOCKET PART(S) ADDED:** 5571678, 5571680, 1846702

# **EXHIBIT C**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA

R&R PARTNERS INC., a Nevada corporation,	)	3:04-cv-00145-LRH-(PAL)
et al.,	)	C/A #: 07-15928
	)	
Plaintiffs/Appellees,	)	
	)	<u>ORDER ON MANDATE</u>
vs.	)	
	)	
DOROTHY TOVAR, an individual, et al.,	)	
	)	
Defendants/Appellants.	)	
_____	)	

The above-entitled cause having been before the United States Court of Appeals for the Ninth Circuit, and the Court of Appeals having on April 10, 2008, issued its mandate dismissing the appeal, and the Court being fully advised in the premises, NOW, THEREFORE, IT IS ORDERED that the mandate be spread upon the records of this Court.

DATED this 14<sup>th</sup> day of April, 2008.



\_\_\_\_\_  
LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE